COMMISSION REGULATION (EEC) No 926/80

of 15 April 1980

on exemption from the application of monetary compensatory amounts in certain cases

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 974/71 of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (1), as last amended by Regulation (EEC) No 987/79 (2), and in particular Article 6 thereof,

Whereas Commission Regulation (EEC) No 1608/74 (3), as amended by Regulation (EEC) No 243/78 (4), introduced special arrangements whereby, under certain conditions, monetary compensatory amounts could be waived on imports or exports effected pursuant to contracts concluded before those amounts were increased or introduced; whereas that Regulation established only a very general framework within which Member States were authorized to lay down rules subject to a degree of coordination at Community level;

Whereas experience suggests that the arrangements should be reviewed with the twofold aim of limiting intervention by the Community bodies in decisions on individual cases and establishing more detailed rules to be followed by the Member State in implementing the provisions; whereas those rules may, for the most part, incorporate the principles followed in practice hitherto;

Whereas the purpose of the rules is to exempt, on a discretionary basis, operations carried out under 'existing contracts' from the application of monetary compensatory amounts; whereas such an equity clause gives rise to a degree of flexibility enabling each case to be considered on its merits; whereas, however, it is necessary that criteria be laid down with a view to ensuring uniform and coordinated implementation of the rules in the various Member States;

Whereas the basic criterion warranting such exemption must be to protect the operator against unavoidable disadvantages arising from the introduction of new monetary compensatory amounts or from an increase in such amounts following a particular monetary measure affecting import or export operations carried out under contracts concluded prior to the monetary measure in question;

Whereas this criterion cannot be properly applied without guidance as to its essential components; whereas to that end the monetary measure, the relevant contracts and the disadvantages must be defined;

Whereas certain fixed limits must be laid down so as to prevent abuse and simplify administration;

Whereas, if the new monetary amounts are charged where there should be exemption, an unjustified financial burden results; whereas provision should therefore be made for suspending payment of monetary compensatory amounts provided their subsequent payment if necessary is guaranteed through the operator furnishing a security;

Whereas the appropriate management committees have not delivered opinions within the time limits laid down by their chairmen,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down the conditions under which Member States shall on a discretionary basis exempt imports and exports from payment of all or part of new monetary compensatory amounts.

Article 2

'New monetary compensatory amount' means:

(a) any monetary compensatory amount introduced as a result of a monetary measure,

(b) the portion of the monetary compensatory amount corresponding to the increase resulting from a monetary measure

which gives rise to the application of the Regulation.

(1) OJ No L 106, 12. 5. 1971, p. 1.
(2) OJ No L 123, 19. 5. 1979, p. 9.
(3) OJ No L 170, 27. 6. 1974, p. 38.
(4) OJ No L 37, 7. 2. 1978, p. 5.

Article 3

1. The monetary measures which give rise to the application of this Regulation shall be :

(a) an adjustment of the central rate of one of the Community currencies ;

(b) a decision no longer to keep a currency within the 2·25 % margin of fluctuation under the European monetary system.

2. This Regulation shall apply only to new monetary compensatory amounts applicable in the Member State where the monetary measure in question occurs.

In the case referred to in paragraph 1 (a), this Regulation shall be applied only in Member States for which the new monetary compensatory amount is calculated using the central rate of its currency.

Article 4

Exemption from payment of the new monetary compensatory amounts may be granted only if the applicant furnishes proof, to the satisfaction of the competent authorities, that the conditions for application of this Regulation have been met.

Article 5

1. Partial or total exemption from payment of monetary compensatory amounts may be granted only for quantities of products which :

(a) are covered by an import or export contract which is firmly concluded on a specified date either :

— before the public announcement of the monetary measure by the competent authorities, or

— after the announcement in question if it is a contract awarded under a tendering procedure in respect of which the time limit for the submission of tenders elapsed before such announcement ;

(b) are imported or exported after the new monetary compensatory amount has taken effect.

2. Partial performance of a firmly concluded contract shall not constitute an obstacle to the application of this Regulation.

Article 6

'Firmly concluded contracts' shall be contracts which, having regard where necessary to commercial practice, lay down unequivocally :

(a) the date on which the contract was concluded ;

(b) the obligations to supply and pay ;

(c) the product to which the contract relates ;

(d) the price expressed in relation to a specified quantity ;

(e) the quantity of the product to be supplied ;

(f) the currency in which payment is to be made ;

(g) the time limits for fulfilment of the obligations ;

(h) the apportionment of costs relating to the contract, in particular transport costs and the payment of the monetary compensatory amounts.

Article 7

1. Exemption from payment of monetary compensatory amounts may be granted only for import and export operations effected within six months of the public announcement of the monetary measure by the competent authorities.

2. However, where for an operation an import or export licence is used which was issued prior to the monetary measure, the time limit referred to in the preceding paragraph shall be replaced by the remaining period of validity of the licence.

Article 8

1. Exemption may be granted only where the applicant, or the contracting party on whose behalf he acts, is subject, by virtue of the new monetary compensatory amount, to an additional expense which he could not have avoided by taking all the necessary and normal precautions.

2. However, the provisions of this Regulation shall not apply :

(a) where the import or export contract lays down that the applicant, or the contracting party on whose behalf he acts, is not liable for payment of the new monetary compensatory amount ;

(b) where it is established that the product to which the new monetary compensatory amount applies is reexported or reimported within six months of import or export.

3. Where movements on the exchange markets yield an advantage to the operator concerned, in particular where he buys or sells currency at forward rates, the advantage shall be deducted from the additional expense. For the purposes of calculating the advantage, the conversion rates for the currencies specified in the contract valid :

(a) on the day of conclusion of the contract, and

(b) on the day of import or of export, as the case may be, shall be compared.

In the case of a currency operation at forward rates, the conversion rate applicable on the day of import or export shall be replaced by that determined by the said operation.

Article 9

1. An additional expense shall be taken to mean the payment of a new monetary compensatory amount which is not necessary, in the circumstances of the case, to offset the effect of the monetary measure on the contract price of the product.

2. Assessment of the circumstances of the case shall include consideration of the following :

(a) the currency in which the invoice is paid ;

(b) the date on which payment is made ;

(c) the purchase or sale of currency at forward rates in connection with the performance of the contract in question ;

(d) the granting of the new monetary compensatory amount for the same product, after processing where applicable.

Forward currency operations shall not be taken into account if :

(a) they are undertaken :

— before conclusion of the contract,

— after the monetary measure ;

(b) they have no direct or indirect economic connection with the contract relating to the product.

Article 10

1. No exemption from payment of monetary compensatory amounts shall be granted where :

(a) the new monetary compensatory amount is calculated on the basis of a monetary gap of not more than one percentage point ;

(b) the effect of an exemption from the new monetary compensatory amount for a given contract would be less than 50 ECU ;

(c) the right existed when the contract was concluded to obtain an advance fixing of the monetary compensatory amount in respect of the product.

2. However, by way of derogation from paragraph 1 (c), this Regulation shall apply in the case referred to in Article 4 of Regulation (EEC) No 243/78 if the monetary compensatory amount was not fixed in advance and if the monetary measure took place during the period referred to in Article 4 (3) of Regulation (EEC) No 243/78 beginning on the day on which the application for the certificate was lodged.

Article 11

1. Requests for application of this Regulation may be submitted only by persons required to pay the new monetary compensatory amount.

2. Requests must be submitted in writing to the competent authorities within five working days of the public announcement of the monetary measure. However, in the case referred to in Article 2 (a), the five-day period shall begin only as from the date of application of the new monetary compensatory amounts.

3. Requests must include the information necessary for the case to be assessed and specify in particular :

(a) the date on which the contract was concluded ;

(b) the product to which the contract relates ;

(c) the price and the quantity of the product specified in the contract ;

(d) the time limits for the performance of obligations ;

(e) the quantity not yet supplied at the time of the monetary measure ;

(f) the country of provenance or of destination, as appropriate ;

(g) the currency in which payment is to be made ;

(h) details relating to the forward purchase or sale of currency ;

(i) details of the portions attracting monetary compensatory amounts ;

(j) whether products imported are intended for re-export and whether products exported are intended for re-import.

Requests must be accompanied, where appropriate, by the original or a certified true copy of the written contract relating to the relevant import or export operation.

4. The competent authority may request the provision of additional information by a given date.

Article 12

1. Where a request for exemption is accepted, all the factors relating to the operation in question shall be recalculated. In particular, the Member State concerned shall make the necessary correction to the monetary coefficient applicable to import levies and export refunds for the operation in question.

2. In the wine sector, acceptance of a request for exemption shall not constitute an exemption from the requirement to comply with the free-at-frontier price corrected pursuant to Article 17 of Regulation (EEC) No 1380/75.

Article 13

1. Where a Member State suspends the charging of the new monetary compensatory amount, it shall require a security to be furnished.

2. The security shall be furnished, at the option of the operator concerned, either in cash or in the form of an undertaking entered into by an establishment fulfilling the requirements laid down by the Member State concerned.

3. The amount of the security shall be that of the suspended new monetary compensatory amount plus 10 % where it is not submitted in cash.

4. The security shall be released according to the extent to which the application for exemption is accepted.

The security shall be released at once if the application for exemption is accepted.

However, if the application is rejected, the security shall be forfeit in lieu of payment of the monetary compensatory amount.

Article 14

1. In order to prevent excessive application of this Regulation, Member States may lay down stricter criteria for its implementation.

2. In cases of *force majeure*, Member States may waive the time limits laid down in this Regulation.

In such cases, Member States shall determine the time limits or other appropriate measures.

Article 15

1. Each Member State concerned shall send to the Commission :

(a) within two months of the public announcement of the monetary measure,
   - the texts of national provisions adopted to give effect to this Regulation,
   - provisional estimate of the quantities and sums covered by requests submitted, distinguishing, in respect of each type of product, between intra-Community trade and trade with non-member countries,
   - an indication, for products subject to new monetary compensatory amounts, of the quantities imported or exported during the part of the previous year which corresponds to the period of exemption provided for in Article 7 ;

(b) every three months, the number of cases and the quantities and sums covered by approved requests for exemption ; in the communication a distinction shall be made, in respect of each type of product, between intra-Community trade and trade with non-member countries ;

(c) every six months, the number and the circumstances of cases in which Article 14 (2) has been applied.

2. The Commission shall ensure that this Regulation is implemented in a uniform and coordinated manner. To that end, additional provisions may be adopted in accordance with the procedure laid down in Article 6 of Regulation (EEC) No 974/71.

3. The national provisions referred to in the first indent of paragraph 1 (a) may be brought into effect only where the Commission has raised no objections in accordance with the procedure laid down in Article 6 of Regulation (EEC) No 974/71 within six weeks of the notification.

Article 16

Regulation (EEC) No 1608/74 is hereby repealed.

Article 17

1. This Regulation shall enter into force on 1 May 1980.

2. This Regulation shall not affect the application of specific provisions adopted in respect of monetary measures which occurred prior to its entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15 April 1980.

For the Commission

Finn GUNDELACH

Vice-President